

VZCZCXRO8304
PP RUEHDBU
DE RUEHKV #0998/01 1161505
ZNY CCCCC ZZH
P 261505Z APR 07
FM AMEMBASSY KYIV
TO RUEHC/SECSTATE WASHDC PRIORITY 2131
INFO RUEHZG/NATO EU COLLECTIVE
RUCNCIS/CIS COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 03 KYIV 000998

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E.O. 12958: DECL: 04/26/2017

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SUBJECT: UKRAINE: YUSHCHENKO DECREES NEW ELECTION DATE TO
PROLONG NEGOTIATIONS, SURPRISES AT THE PROSECUTOR'S OFFICE

Classified By: Ambassador for reasons 1.4(a,b,d).

11. (SBU) Summary. President Yushchenko issued a new decree on early parliamentary elections late on April 25 in response to increasing indications that Constitutional Court was ready to deliver a quick ruling against the decree which would have bolstered the coalition's side in ongoing President-PM negotiations. The new decree, which sets elections for June 24, appears to be an effort to extend the negotiating window, give more time for potential election preparations, and address some of the legal grounds on which the coalition attacked the April 2 decree as unconstitutional. In particular, the April 25 decree incorporated Article 90--the article that spells out specific grounds for the President to dissolve the Rada--into its justification for dismissing the Rada and calling new elections. Court sources told us early April 26 that the Court would consider whether to cease deliberations on the April 2 decree based on the new decree, but there has yet to be a confirmation of that decision. PM Yanukovych, in Uzbekistan for a previously unscheduled visit after attending Boris Yeltsin's funeral in Moscow, announced he would return immediately to Kyiv. Yushchenko made a further unexpected move April 26 by reinstating former Prosecutor General Piskun--a Regions MP who claims he was fired unfairly by Yushchenko in October 2005--to his old position after a district Court decision. Clearly caught off guard, some Regions MPs welcomed the move while others attempted to barricade the doors to the PGO. A group of coalition MPs, including two defectors from BYuT, registered a draft bill in the Rada to impeach Yushchenko.

12. (C) Comment. Presidential Secretariat deputy head Vasyunyk and PM adviser Gryshchenko both claimed to the Ambassador late April 25, after Yushchenko's announcement of a new decree, that the other side had been negotiating in bad faith and planning something all along. After an unproductive, circus-like roundtable discussion April 25 that yielded no positive results, it is clear that Yushchenko and Yanukovych need to resume their personal meeting to move the process of resolving the situation forward. The Ambassador met with both teams April 26 to urge the President and PM to reengage. A well-placed Court sources told us late April 25 that the Court was preparing to rule against Yushchenko as soon as April 26; such a decision before the conclusion of political negotiations would have severely weakened Yushchenko's hand, perhaps fatally wounding his already weakened presidency. Issuing the new decree most likely buys him another month of negotiating time, even if the current standoff and dynamics in the political negotiations are likely to continue. End Summary and Comment.

Moving the Goalposts: New Decree Changes Date for Elections

13. (SBU) Yushchenko appeared on television at 2130 April 25 to announce a new decree with a new date of early elections

set for June 24. He justified the move by citing non-implementation of his first April 2 decree and the blocking of the Central Election Commission (CEC)'s work. He again emphasized that the mass defection of MPs in March had distorted the will of the people expressed in the March 2006 elections and that he had a duty as the guarantor of the Constitution to protect democracy.

¶4. (SBU) Stillborn preparations for elections aside, the proceedings in the Constitutional Court clearly affected the timing and content of the new decree, which countered several arguments the coalition had used against the constitutionality of the first decree. Most importantly, the April 25 decree, promulgated in the Presidential Journal April 26, referenced Article 90 of the Constitution, which lists the three specific situations in which the President may disband the Rada (below). The Presidential Secretariat also took care to post on the presidential website both the minutes of the consultations he conducted prior to dissolving the Rada (again) and the announcement that the decree had been formally promulgated; both were procedural issues the coalition raised in the CC hearings.

¶5. (C) Comment. If the coalition appeals the new decree to the Court, as is expected, attention will center on Yushchenko's use of Article 90. His new justification appears to contend that, when the Anti-Crisis Coalition accepted former Our Ukraine bloc figure Anatoliy Kinakh as Minister of Economy and his half-dozen MPs, rebranding itself as the National Unity Coalition in March, it constituted formation of a new coalition. Because this new coalition did not adhere to the constitutional requirement that factions, not MPs, form a coalition, Yushchenko invoked his right to dissolve parliament absent formation of a proper coalition within 30 days. The validity of this reasoning may hinge on

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whether the ACC was formally disbanded or its name simply changed. Once again, the Constitutional Court may play a central role in resolving the matter, in parallel with political negotiations.

Both Sides React with Accusations; Court Ponders

¶6. (C) Deputy Head of the Presidential Secretariat Vasyunyk assured Ambassador late on April 25 that Yushchenko had been acting in good faith in negotiations with Yanukovych since April 2. It was the PM who had acted in bad faith, he claimed, because Yanukovych's team had known throughout the process that the CC would move quickly to rule before the political negotiations were complete. Once the Court moved into closed deliberation, Vasyunyk said, the President felt he had no alternative but to act. (Note: our Court sources indicated to use late April 25 that the Court was indeed poised to rule as early as April 26 after racing through closing arguments and holding only a day of closed chamber deliberations.)

¶7. (C) PM Foreign Policy Adviser Gryshchenko told Ambassador late on April 25 that it was actually the President who had acted in bad faith and that Yanukovych, upon hearing the news, had reacted with fury. PM Chief of Staff Lyovochkin told the press in Tashkent that Yanukovych--who had made a last-minute decision to make a two-day visit to Uzbekistan April 25-26 in the wake of attending Boris Yeltsin's funeral in Moscow--had cut short his trip to Tashkent and would return to Kyiv.

¶8. (SBU) Back in Kyiv, six coalition MPs, including 2 BYuT defectors, registered a bill on impeaching Yushchenko, although Regions faction leader Bohatyreva had said publicly just a few hours earlier that impeachment wasn't currently on their agenda. (Note: Regions MPs had rushed to register an impeachment bill last August when it seemed Yushchenko might dismiss the Rada rather than appoint Yanukovych PM, but we

judge impeachment an idle threat for now, probably designed to put pressure on the President. The complicated process involves two Rada votes (one of 300 MPs, the second of 338) and decisions from the Supreme and Constitutional Courts, and additional implementing legislation is also required. End note.)

¶9. (SBU) The first order of Court business April 26, according to court sources, was to determine whether the April 25 decree removed the grounds for the Court to proceed with a ruling on the now invalidated April 2 decree. At a mid-day press conference April 26, Yushchenko's CC rep Shapoval maintained that, since the first point of the new decree canceled the old one, there was no further need for the CC to rule. He also emphasized that Yushchenko had issued the new decree because large parts of the government had failed to implement the first decree. There was no official word on a court decision by COB.

CVU: Do Elections and Representative Democracy Right

¶9. (SBU) Respected election watchdog group Committee of Voters of Ukraine (CVU) issued a statement April 26 urging that, if political forces agreed to new elections, they should make changes to introduce greater transparency and logic into the process. In particular, CVU recommended an October 2007 election date, which would provide a four-month campaign cycle, allowing election organizers and parties to properly prepare. CVU also advocated changes to the election law to alter the strict party list system in order to increase MP responsibility to a specific region. Finally, they called for changes to the Rada rules to require actual MP presence in order to vote (currently MP voting cards are collected to allow voting even if the MP is out of town or even country) and to prevent faction switching, with spelled-out penalties for violating the rules.

Third Time's a Charm? Piskun returns as PGO

¶10. (SBU) In an unexpected move, Yushchenko signed another decree on April 26 reinstating former Prosecutor General Serhiy Piskun (currently a Regions MP) to his old position. The move de facto dismissed PG Medvedko, who committed himself to a local hospital April 20 in the midst of the controversy over PGO actions related to investigations of allegations of \$12 million worth of recent property acquisitions by close relatives of Constitutional Court Justice Stanik, the Reporting Judge in the April 2 decree case. Yushchenko appeared in person at the PGO to introduce Piskun, whom he had previously fired in October 2005. Since

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his firing, Piskun had been unsuccessful in several attempts to be reinstated through the courts as the Prosecutor General. The most recent rejection of Piskun's reinstatement appeals came April 25 at the Shevchenko District Court, which reversed itself under a different judge April 26 to order Piskun reinstated. Yushchenko made clear in his introduction of Piskun that he had no love for Piskun, but suggested that Piskun had more to his credit than did Medvedko, and that the PGO had serious work and responsibilities it had neglected recently.

¶11. (SBU) The coalition was clearly caught off guard by the reinstatement. Twenty Regions MPs attempted to block the PGO office to prevent Yushchenko from formally introducing Piskun. In contrast, Regions MPs Hanna Herman and Serhiy Kivalov welcomed the appointment, saying it was a victory for due process and the coalition.

¶12. (SBU) Note: The only way Medvedko could have been removed in the short term was through Piskun's reinstatement after the district court ruling, since nominating a new PGO would have required a Rada confirmation vote. Piskun, initially

fired as PG by President Kuchma in 2003 for his efforts to investigate the 2000 Gongadze murder, was first reinstated to the PGO in December 2004 in the wake of the political compromises ending the Orange Revolution which removed his successor as PG, Vasyliev. Yushchenko retained Piskun for ten months, but eventually fired him for lack of progress in prosecuting any high profile case from the Kuchma era, including Yushchenko's own poisoning case. End note.

¶13. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.
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